

IN THE ABSTRACT:

Please substitute the enclosed abstract for the present abstract pursuant to 37 C.F.R § 1.125(b). The substitute abstract contains no new matter. A marked-up copy of the substitute abstract showing the matter being added and/or deleted is also enclosed.

RESPONSE UNDER 37 C.F.R. § 1.105

The undersigned is advised that the subject variety was sold outside the United States on or about March 1, 1999. As of the United States filing date, no sales were made nor was product available in the United States. Copies of the requested information in the possession of Applicant or Applicant's attorney are enclosed.

REMARKS

The claim of the pending plant patent application stands rejected under 35 U.S.C. § 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant. This ruling is totally inappropriate and is contrary to the longstanding holding in *In re LeGrice*, 301 F.2d 929 (C.C.P.A. 1962).

I. Novelty

The Examiner has cited a first Plant Breeders' Rights application, a second Plant Breeders' Rights application, and asserted existence of the plant specimen anywhere in the world as a basis for the rejection. It is unclear whether the Examiner is combining the references for the rejection or letting them stand alone. It appears that the Examiner is combining the printed publication(s) and the plant specimen, as may be proper for a 35 U.S.C. § 103 rejection, not a 35 U.S.C. § 102(b) rejection, however, the distinction is immaterial for the reasons discussed herein.

The printed publications cited are (1) Breeders' Rights Application No. 981669, which was filed in Europe on December 10, 1998 and published on